



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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November 6, 2015

Ms. Pamela Holdgrafer  
8750 Oak Street  
Zionsville, Indiana 46077

*Re: Formal Complaint 15-FC-247; Alleged Violation of the Access to Public Records Act by the City of Indianapolis and the Indianapolis Metropolitan Police Department*

Dear Ms. Holdgrafer,

This advisory opinion is in response to your formal complaint alleging the City of Indianapolis and the Indianapolis Metropolitan Police Department ("IMPD") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* IMPD responded via Mr. Justin Paicely, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 9, 2015.

## **BACKGROUND**

Your complaint dated September 8, 2015 alleges IMPD violated the Access to Public Records Act by failing to provide the records you requested.

On numerous occasions, you have attempted to obtain records relating to the death of your son. Your request was denied as investigative, under Ind. Code 5-14-3-4(b)(1). On July 31, 2014, IMPD was called to a scene wherein your son Brett was found deceased. After a brief investigation, his death was ruled a suicide. After reviewing evidence known to you, you have reason to believe the death may have not been suicide, or at the very least, would warrant additional investigation.

Your records have been denied as investigatory records of law enforcement. In an email conversation with IMPD personnel, a captain advised you that a subpoena would be needed to view any investigatory record. This would prove to be difficult as there is no pending litigation. Further, the captain made the following statement dated February 24, 2015:



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*"I believe when you eventually view all of this, it will go a long way in giving you closure"*

On October 5, 2015, the City responded to your formal complaint. Despite the captain's indication that information would ease your mind, the City of Indianapolis on behalf of IMPD reiterated the investigatory exemption.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Indianapolis Metropolitan Police Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy IMPD's disclosable, public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The APRA sets forth several exceptions to disclosure. One of the instances when the release of records is discretionary is when information is compiled in the course of a criminal investigation by law enforcement. See Ind. Code § 5-14-3-4(b)(1). Ind. Code § 5-14-3-2 (i) defines investigatory records as information compiled in the course of the investigation of a crime.

The investigatory records exception is indeed broad and captures material collected or compiled during the course of a criminal investigation. This would also ostensibly cover suicide investigations. It is important to note this applies to pre-existing public records which would normally be subject to disclosure but for the criminal investigation. This office has held on several occasions, the investigative exemption continues even after the investigation is complete.

On the other hand, it has been my recommendation that law enforcement apply this exception judiciously. If its investigation is closed and the revealed information would not compromise public safety or an expectation of privacy, it should be released. Discretionary exemptions place the decision in the hands of the agency with custody of a record. That choice should favor transparency whenever it is practical to do so.



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I have gone so far as to address law enforcement on matters very similar to your circumstance. From everything I have seen related to this case, IMPD considers this an open-and-shut suicide case. They have not indicated anything to the contrary. To arbitrarily apply the investigatory record exemption to a closed case is poor customer service at best. But to dangle and tease information to a grieving family and then require a subpoena for 'closure' is unconscionable and cruel. IMPD has been given the opportunity to provide a compelling reason for their actions and they have declined to do so. This leaves me with the impression that their application of the investigatory record is capricious.

In the past, I have been pleased with IMPD and other law enforcement agency's flexibility and compassion when it comes to the release of information in sensitive matters. This is not one of those times. Although the exemption is valid, its application in this circumstance leans heavily against transparency and access. My strong recommendation is the release of any information referenced in the February 24, 2015 email.

Regards,

A handwritten signature in black ink, appearing to read "LHB", written over a horizontal line.

Luke H. Britt  
Public Access Counselor

Cc: Ms. April Shultheis, Esq.